THAI KIM SIM v. PP

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD SHAHRIR MOHD SALLEH JC
[CRIMINAL APPLICATION NO: 44-13-02-2019]
14 OCTOBER 2019

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Application to adduce additional evidence – Whether relevant to appeal – Whether evidence sought to be admitted available at trial – Whether capable of casting reasonable doubt on guilt of applicant when considered together with other evidence at trial – Whether evidence credible and capable of belief – Whether prosecution's responsibility to deliver evidence to defence extended until after commencement of trial – Criminal Procedure Code, ss. 51A(1), (5) & 317*

The applicant, the managing director of APL Industries Bhd ('APLI'), was charged under s. 188(3)(a) of the Capital Markets and Services Act 2007 ('CMSA') for communicating an inside information to one Tiong Kiong Choon ('Tiong'). Tiong was charged with two charges, under s. 188(2)(a) of the CMSA, for disposing certain shares held in the name of two individuals while in possession of the inside information. The applicant was subsequently convicted and sentenced to imprisonment for a period of five years and a fine of RM5,000,000. Dissatisfied, the applicant appealed against both the conviction and sentence. The applicant filed an application, under s. 317 of the Criminal Procedure Code ('CPC'), to adduce additional evidence in his appeal, amongst others, list of Regulatory Settlements, updated list of Regulatory Settlements in 2017 as well as series of eight Form 49 of APLI. The crux of the applicant's defence was that he did not disseminate the inside information and the Regulatory Settlements would show that the inside information was in fact disclosed by someone else and if the Regulatory Settlements were not allowed to be included as additional evidence in the appeal, the applicant would be deprived of a fair trial.

Held (dismissing application):

(1) In an appeal, the court has the discretion to admit additional evidence which was not adduced at trial upon application being made in that regard. In considering the admission of additional evidence on appeal, the following conditions must be satisfied: (i) the evidence must be one which was not available at trial; (ii) the evidence sought to be admitted on appeal must be relevant to the issues to be canvassed in the appeal; (iii) the evidence must be credible and capable of belief; and (iv) whether the admission of the additional evidence would create a reasonable doubt as to the guilt of the accused if it is considered together with other evidence at trial. (paras 12 &13)

(2) The Regulatory Settlements sought by the applicant to be adduced as additional evidence in the appeal was made available on the website of the Securities Commission of Malaysia on 30 June 2017 whereas the

defence only closed its case on 10 July 2017 and the decision was delivered on 24 November 2017. The series of eight Form 49 sought to be admitted as additional evidence in the appeal ranged from one which was dated 26 April 2006 to one which was dated 26 March 2009. The defence only closed its case on 10 July 2017. Hence, the Regulatory Settlements and the series of eight Form 49 of APLI were not evidence which were not available during the trial of the applicant. (paras 15 & 16)

(3) Relevancy of a fact in issue is determined by examining whether it forms part of a fact which is asserted or denied in relation to the charge proffered against the applicant. The applicant failed to demonstrate, in his affidavits, the manner in which the Regulatory Settlements could have been relevant to his case. The Regulatory Settlements related to the tipping of inside information between two different individuals, namely between one Lim Lee Kuan and Lee Tian Wah. They had nothing to do with the position taken by the applicant that the inside information could have been disclosed to Tiong by Lim Lee Kuan and not the applicant. Hence, the court was unable to find in favour of the applicant as far as the question of relevancy of the Regulatory Settlements to the applicant's appeal is concerned and the extent to which they may be capable of belief. (paras 18 & 20)

(4) It was the defence of Tiong that he had traded the shares for some other reasons and not as a result of any inside information being disclosed to him. The Regulatory Settlements, even if they were allowed to be admitted as additional evidence in the appeal, would not be capable of casting reasonable doubt in the guilt of the applicant. There was no disclosure of inside information to Tiong to begin with. (para 22)

(5) Insofar as pre-trial documents favourable to the defence is concerned, suffice if the prosecution provides the defence with the type of documents specified under para. (c) of s. 51A(1) of the CPC, which, in the opinion of the prosecution, would be favourable to the defence in relation to the charge. These are pre-trial documents and on a plain reading of s. 51A of the CPC, the responsibility of the prosecution to deliver them to the defence does not extend until after the commencement of the trial. Section 51A(5) does not impose a similar duty on the prosecution but merely qualifies the production or delivery of documents after the trial has commenced by allowing the accused a reasonable time to examine the document and to recall or resummon and examine any witness in relation to that document. The contention that the prosecution was bound to furnish to the applicant the Regulatory Settlements pursuant to s. 51A of the CPC was very much misguided and would be an attempt at stretching too much an interpretation to the otherwise clear words of the statute. (paras 25 & 26)

(6) The Regulatory Settlements was not available to the prosecution before the commencement of the trial and as such, the prosecution could not be said to have run afoul of s. 51A of the CPC. Even if the Regulatory Settlements were available to the prosecution before the commencement of the trial, the prosecution was merely expected to furnish the accused with a written statement of the fact of that Regulatory Settlements and not the Regulatory Settlements itself. In respect of the series of eight Form 49 of APLI, they were already available during trial. In the circumstances, the applicant had not discharged the burden to show the four cumulative requirements being the threshold for admission of additional evidence. (para 28)

Case(s) referred to:
Benjamin William Hawkes v. PP [2017] 1 LNS 1480 CA ***(refd)***
Che Din Ahmad v. PP [1975] 1 LNS 7 HC ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2016] 6 CLJ 161 FC ***(refd)***
Mohamed Jamal v. PP [1964] 1 LNS 235 FC ***(refd)***
Murugayah v. PP [2004] 2 CLJ 489 CA ***(refd)***
PP v. Mohd Fazil Awaludin [2009] 2 CLJ 862 HC ***(refd)***
R v. Parks [1961] 3 All ER 633 ***(refd)***

Legislation referred to:
Capital Markets and Services Act 2007, s. 188(2)(a), (3)(a)
Criminal Procedure Code, ss. 51A(1)(a), (b), (c), (5), 317

For the applicant - Gopal Sri Ram, Guok Ngek Seong, Lam Kah Kah, Emily Wong, Yasmeen Soh & Goh Kar Man; M/s Wong & Partners
For the respondent - Mohd Hafiz Mohd Yusof & Ng Chian Huey; DPPs

Reported by S Barathi

JUDGMENT

Ahmad Shahrir Mohd Salleh JC:

Background Facts

[1] The applicant was the managing director of APL Industries Bhd ("APLI"). The applicant was charged under s. 188(3)(a) of the Capital Markets and Services Act 2007 for communicating the following inside information to one Tiong Kiong Choon:

(i) audit adjustments proposed by APLI's auditor which would result in APLI reporting a higher loss for the financial year ended 30 June 2007 as compared to the previously reported unaudited fourth quarter results for the same financial year; and

(ii) that APLI would be classified as an affected issuer pursuant to the Listing Requirements of Bursa Malaysia Securities Berhad and Practice Note 17/2005.

Tiong Kiong Choon was charged with two charges respectively under s. 188(2)(a) of the Capital Markets and Services Act 2007 for disposing certain shares held in the name of two individuals while in possession of the same inside information. The charges for both the applicant and Tiong Kiong Choon were tried together.

The charge which was proffered against the applicant reads as follows:

> That you, between 26.10.2007 and 29.10.2007 in Malaysia, as an insider communicated to one Tiong Kiong Choon (NRIC No: 600508-08-5375) information that was not generally available which on becoming available a reasonable person would expect it to have a material effect on the price of the value of APL Industries Berhad's (Company No. 500872-H) ("APLI") shares and you ought reasonably to have known that the information was not generally available, such information being:
>
> (c) audit adjustments proposed by APLI's auditor which would result in APLI reporting a higher loss for the financial year ended 30 June 2007 as compared to the previously reported unaudited 4th quarter results for the same financial year, and
>
> (d) that APLI would be classified as an affected issuer pursuant to the Listing Requirements of Bursa Malaysia Securities Berhad and Practice Note 17/2005,
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> and you ought reasonably to have known that Tiong Kiong Choon would tend to dispose the securities of APL Industries Berhad which trading is permitted on the stock market of Bursa Malaysia Securities Berhad and you have thereby committed an offence under section 188(3)(a) of the Capital Markets and Services Act 2007 and punishable under section 188(4) of the same Act.

[2] At the close of prosecution, the learned Sessions Court Judge found that the prosecution has succeeded in establishing a *prima facie* case against the applicant. The applicant was called upon to enter his defence. At the close of defence, the learned Sessions Court Judge convicted the applicant. On 24 November 2017, the applicant was sentenced to imprisonment for a period of five years and a fine of RM5,000,000. The applicant paid the fine.

[3] The applicant is not satisfied with the decision of the learned Sessions Court Judge and appeals against both the conviction and sentence. On 4 February 2019, the applicant filed an application under s. 317 of the Criminal Procedure Code to adduce additional evidence in his appeal against the conviction and sentence.

The Application

[4] In the application, the applicant applies for the following reliefs:

(i) that the applicant be given leave to adduce the following further evidence at the hearing of the appeal herein:

(a) List of regulatory settlements produced as part of the submissions at pp. 1 – 32 of the record of appeal vol. 4(a) and marked as "Annexure 1" attached to this motion;

(b) Updated list of regulatory settlements in 2017 printed from the website of the Securities Commission of Malaysia on 16 January 2019 and marked as "Annexure 2" attached to this motion;

(c) A copy of Form 49 dated 26 April 2006, a copy of Form 49 dated 6 September 2007, a copy of Form 49 dated 29 October 2007, a copy of Form 49 dated 14 December 2007, a copy of Form 49 dated 30 January 2008, a copy of Form 49 dated 2 June 2008, a copy of Form 49 dated 5 September 2008 and a copy of Form 49 dated 26 March 2009 marked collectively as "Annexure 3" attached to this motion;

(ii) that the appeal herein be stayed until after the disposal of this motion; and

(iii) further and/or other relief and directions as this Honourable Court deems fit and just in the circumstances.

[5] The affidavits filed for and against the application are as follows:

(i) "afidavit sokongan pemohon/perayu" affirmed on 31 January 2019 by Thai Kim Sim, the applicant;

(ii) "afidavit jawapan" affirmed on 8 March 2019 by Aimi Khalidah binti Mohd Puzi for the respondent;

(iii) "afidavit jawapan pemohon/perayu (1)" affirmed on 22 March 2019 by Thai Kim Sim, the applicant;

(iv) "afidavit jawapan responden (2)" affirmed on 29 March 2019 by Aimi Khalidah binti Mohd Puzi for the respondent; and

(v) "afidavit jawapan pemohon/perayu (2)" affirmed on 5 April 2019 by Thai Kim Sim, the applicant.

Brief Deliberations

Contention Of The Applicant

[6] In support of the application, learned counsel for the applicant contends that the regulatory settlements are facts which were material to the applicant's defence and that the prosecution, in violation of s. 51A of the Criminal Procedure Code, had failed to disclose the regulatory settlements to the defence. It is the arguments of learned counsel for the applicant that the regulatory settlements were crucial to the applicant's defence as they would show that the inside information was communicated by persons other than the applicant whereas the applicant was charged with and convicted by the trial court of an offence concerning the same inside information.

[7] Learned counsel for the applicant contends that the applicant has satisfied the conditions under s. 317 of the Criminal Procedure Code in that the regulatory settlements are necessary in the interest of justice and for a just and proper decision of the case. At the trial court, the crux of the applicant's defence was that the applicant did not disseminate the inside information and the regulatory settlements would show that the inside information was in fact disclosed by someone else. If the regulatory settlements are not allowed to be included as additional evidence in the appeal, the applicant would be deprived of a fair trial.

Contention Of The Respondent

[8] The learned DPP on the other hand contends that the applicant had not satisfied the prerequisites for admission of additional evidence on appeal. The regulatory settlements sought to be adduced as additional evidence in the appeal were in fact available even before the end of the defence case on 10 July 2017 as they were published on the website of the Securities Commission of Malaysia on 30 June 2017. The decision of the trial court was handed down on 24 November 2017. It is thus clear that the applicant had sufficient time, before he closes his defence, to take the necessary steps to admit the regulatory settlements as evidence in his behalf but he chose not to.

[9] In respect of the series of eight Form 49 and the extract of the particulars of directors/officers from the Companies Commission of Malaysia, the learned DPP contends that these documents are APLI's corporate documents showing information between the year 2006 to 2009 and Lim Lee Kuan, who was the company secretary of APLI at that time and that the Companies Commission of Malaysia were in possession of them at the material time. The applicant too, being the managing director of APLI ought to have known that these documents are in possession of the company secretary. In fact, as early as during the prosecution's case, the role of Lim Lee Kuan as the company secretary of APLI and her attendance at the 38th Board meeting of APLI whereby the Board deliberated on the inside information was part of the evidence. To that end, the applicant then had sufficient notice of that fact even during the prosecution's case.

[10] The learned DPP also takes issue on the relevancy of the regulatory settlements. It is the contention of the learned DPP that the applicant has failed to show how the regulatory settlements would be relevant to the applicant's defence and that they are capable of belief. It is the contention of the learned DPP that the regulatory settlements sought to be adduced as additional evidence in the appeal are not relevant to the applicant's defence insofar as the charge against him is concerned because of the following reasons:

(i) the regulatory settlements relate to the tipping of inside information between two different individuals, namely between one Lim Lee Kuan and Lee Tian Wah @ Lim Siew Wah. They have nothing to do with the

assumption by the applicant that the inside information could have been disclosed to Tiong Kiong Choon by Lim Lee Kuan and not the applicant;

(ii) it is not capable of belief to hold the position that the regulatory settlements would show that it was someone else who had tipped Tiong Kiong Choon and not the accused. In his case, Tiong's defence was that he had disposed of APLI shares for a variety of reasons but none of them were due to being tipped of the inside information. In the applicant's case, the applicant denied having communicated the inside information to Tiong. Further, all facts surrounding the position of Lim Lee Kuan as the company secretary of APLI from the year 2006 to 2009 were amply demonstrated at trial. As such, there is no issue of non-disclosure as far as the position of Lim Lee Kuan as the company secretary for APLI for the relevant periods is concerned;

(iii) the regulatory settlements, when considered against the strength of the case against the applicant, does not raise a reasonable doubt as to the guilt of the applicant and could not have been crucial to the determination of the case against the applicant on a consideration of the evidence in its totality.

[11] The learned DPP further contends that it is misconceived for the learned counsel for the applicant to argue that the prosecution has a continuing duty to disclose facts favourable to the defence throughout the trial pursuant to s. 51A(1)(c) of the Criminal Procedure Code. The obligation to disclosure facts favourable to the defence is limited to pre-trial stage and does not extend after the commencement of trial.

Analysis

[12] In an appeal, the court has a discretion to admit additional evidence which was not adduced at trial upon an application being made in that regard. The admission of additional evidence on appeal must be subject to compliance of certain conditions and it should not be allowed merely to supplement the prosecution's case or the defence. The admission of additional evidence in appeals is governed by s. 317 of the Criminal Procedure Code.

Section 317 of the Criminal Procedure Code reads as follows:

> Order to take further evidence
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> 317. (1) In dealing with any appeal under this Chapter a Judge, if he thinks additional evidence to be necessary, may either take such evidence himself or direct it to be taken by a Magistrate.
>
> (2) When the additional evidence is taken by a Magistrate he shall certify that evidence to the High Court who shall then, as soon as may be, proceed to dispose of the appeal.

A (3) Unless the Judge otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

(4) The taking of evidence under this section shall, for the purposes of Chapter XXV, be deemed to be an inquiry.

B **[13]** It is well-established that in considering the admission of additional evidence on appeal, the following conditions must be satisfied:

(i) the evidence must be one which was not available at trial;

(ii) the evidence sought to be admitted on appeal must be relevant to the issues to be canvassed in the appeal;

C (iii) the evidence must be credible and capable of belief; and

(iv) whether the admission of the additional evidence would create a reasonable doubt as to the guilt of the accused if it is considered together with other evidence at trial.

D (See: *Mohamed Jamal v. PP* [1964] 1 LNS 235 FC; [1964] 1 MLJ 254; [1964] 1 MLRA 588, *Che Din Ahmad v. PP* [1975] 1 LNS 7; [1976] 1 MLJ 289; [1975] 1 MLRH 536 and *Murugayah v. PP* [2004] 2 CLJ 489 CA; [2004] 2 MLJ 545; [2004] 1 MLRA 280; [2004] 3 AMR 443).

E **[14]** It has been reiterated by the apex court in *Dato' Seri Anwar Ibrahim v. PP* [2016] 6 CLJ 161 FC; [2016] MLJU 228; [2016] 4 MLRA 335; [2016] 4 AMR 213, following *R v. Parks* [1961] 3 All ER 633, that the admission of additional evidence is subject to the satisfaction of all the four conditions cumulatively.

F *Whether The Additional Evidence Is Not Available During Trial*

[15] In the present application, the regulatory settlements sought by the applicant to be adduced as additional evidence in the appeal was made available on the website of the Securities Commission of Malaysia on 30 June 2017 whereas the defence only closed its case on 10 July 2017 and the G decision was delivered on 24 November 2017. These facts are not in dispute by the applicant. In fact, learned counsel for the applicant had referred to the regulatory settlements in the course of presenting submissions in mitigation for the applicant as evident at para. 9 of the "afidavit sokongan pemohon/perayu" affirmed on 31 January 2019 by the applicant. From a reading of H the applicant's affidavits, the true state of affairs then was that the applicant only became aware of the purported significance of the regulatory settlements after the learned Sessions Court Judge pronounced the conviction against the applicant and not so much due to the alleged non-disclosure by the prosecution. This is apparent from a reading of para. 12 of the "afidavit I sokongan pemohon/perayu" affirmed on 31 January 2019 by the applicant which reads as follows:

12. Selepas sabitan tersebut barulah peguambela baru saya mendapati kepentingan Eksibit A-2. Kepentingannya adalah seperti berikut.

[16] The series of eight Form 49 of APLI sought to be admitted as additional evidence in the appeal ranges from one which is dated 26 April 2006 to one which is dated 26 March 2009. The fact that Lim Lee Kuan was the company secretary for APLI has been disclosed to the applicant before commencement of the trial pursuant to s. 51A of the Criminal Procedure Code. These are documents which have been marked as exhs. P10, P11, P12 and P13 respectively, as averred by the respondent in his affidavit. Again, as a matter of perspective, the defence only closed its case on 10 July 2017. On this score, I find that the regulatory settlements and the series of eight Form 49 of APLI are not evidence which were not available during the trial of the applicant.

Whether The Additional Evidence Is Relevant To The Issues To Be Canvassed In The Appeal

Whether The Evidence Is Credible And Capable Of Belief

[17] In his affidavit, the applicant avers that the information contained in the regulatory settlements are relevant to show that the communication of inside information of APLI could have been made by Lim Lee Kuan as the company secretary of APLI, to Tiong Kiong Choon but not the applicant. The respondent avers that the regulatory settlements relate to communication of inside information between Lim Lee Kuan and Lee Tian Wah @ Lim Siew Wah. They do not relate to communication of inside information to Tiong Kiong Choon.

[18] In this regard, I find that the applicant has failed to demonstrate in his affidavits the manner in which the regulatory settlements could have been relevant to his case. The applicant made a sweeping averment that the inside information could have been disclosed to Tiong Kiong Choon by Lim Lee Kuan but not the applicant. The regulatory settlements relate to the tipping of inside information between two different individuals, namely between one Lim Lee Kuan and Lee Tian Wah @ Lim Siew Wah. They have nothing to do with the position taken by the applicant that the inside information could have been disclosed to Tiong Kiong Choon by Lim Lee Kuan and not the applicant.

[19] The disclosure was made by Lim Lee Kuan to Lee Tian Wah @ Lim Siew Wah. It was not one which was made to Tiong Kiong Choon. If that is the position taken by the applicant, in what manner could such disclosure be possible? Was it part of the applicant's defence that the inside information was in fact disclosed to Tiong Kiong Choon by Lim Lee Kuan? Was it suggested or put across to any of the prosecution's witnesses in cross-examination as part of the applicant's defence during trial? These questions were not addressed by the applicant in his affidavits to support the question of relevancy of the regulatory settlements for their admission as additional evidence in his appeal.

[20] In the present application, I am of the considered view that relevancy of a fact in issue is determined by examining whether it forms part of a fact which is asserted or denied in relation to the charge proffered against the applicant. Since the applicant did not condescend to these crucial facts in his affidavits, this court is unable to find in favour of the applicant as far as the question of relevancy of the regulatory settlements to the applicant's appeal is concerned and the extent to which they may be capable of belief.

Whether The Admission Of The Additional Evidence Would Create A Reasonable Doubt As To The Guilt Of The Accused If It Is Considered Together With Other Evidence At Trial

[21] The grounds of judgment of the learned Sessions Court Judge is appended as exh. "AR – 3" in "afidavit jawapan responden (2)" affirmed on 29 March 2019 by Aimi Khalidah binti Mohd Puzi for the respondent. In his judgment, the learned Sessions Court Judge made a finding that the conviction is based on *inter alia*, the following strong circumstantial evidence:

(a) the fact that the applicant made telephone calls to Tiong Kiong Choon a few days before the announcement and just two minutes after the call made by Tiong Kiong Choon to the applicant, the first order to sell was entered;

(b) the fact that the calls were made at a time when the applicant was in possession of the inside information although for some two months prior to that, there were no communication between Tiong Kiong Choon and the applicant;

(c) the circumstances of possession of the inside information, access to the inside information, relationship between the applicant and Tiong Kiong Choon, the timing of the communication, the timing of the trading of shares, the pattern of the trading and the attempts to conceal the trading and the relationship between the applicant and Tiong Kiong Choon;

(d) Tiong Kiong Choon had traded the shares and in his explanation, it was not the case that he traded the shares based on any inside information communicated to him even by Lim Lee Kuan.

[22] It is the defence of Tiong Kiong Choon that he had traded the shares for some other reasons and not as a result of any inside information being disclosed to him. In the circumstances of the defence adopted by Tiong Kiong Choon, I am of the considered view that the regulatory settlements, even if they were allowed to be admitted as additional evidence in the appeal, would not be capable of casting a reasonable doubt in the guilt of the applicant. There was no disclosure of inside information to Tiong Kiong Choon to begin with. If that is the case, how could the regulatory settlements

which show disclosure by Lim Lee Kuan to Lee Tian Wah @ Lim Siew Wah be material or capable to raise doubt as to the guilt or otherwise of the applicant? In the circumstances, I find that the applicant has failed to satisfy this ground too.

Whether The Prosecution Is Under A Duty To Disclose All Evidence Which Are Material To The Defence

[23] The provisions relating to delivery of pre-trial documents are found in s. 51A of the Criminal Procedure Code. It relates to the statutory requirement for the prosecution to furnish the defence with the category of documents specified in paras (a) to (c) of s. 51A(1) of the Criminal Procedure Code.

Section 51A of the Criminal Procedure Code reads as follows:

> Delivery of certain documents
>
> 51A. (1) The prosecution shall before the commencement of the trial deliver to the accused the following documents:
>
> (a) a copy of the information made under section 107 relating to the commission of the offence to which the accused is charged, if any;
>
> (b) a copy of any document which would be tendered as part of the evidence for the prosecution; and
>
> (c) a written statement of facts favourable to the defence of the accused signed under the hand of the Public Prosecutor or any person conducting the prosecution.
>
> (2) Notwithstanding paragraph (c), the prosecution may not supply any fact favourable to the accused if its supply would be contrary to public interest.
>
> (3) A document shall not be inadmissible in evidence merely because of non-compliance with subsection (1).
>
> (4) The Court may exclude any document delivered after the commencement of the trial if it is shown that such delivery was so done deliberately and in bad faith.
>
> (5) Where a document is delivered to the accused after the commencement of the trial, the Court shall allow the accused:
>
> (a) a reasonable time to examine the document; and
>
> (b) to recall or resummon and examine any witness in relation to the document.

[24] Apart from the being a statutory signification of a fundamental rule of fair trial as the core principle in the administration of criminal justice (See: *Benjamin William Hawkes v. PP* [2017] 1 LNS 1480 CA; [2017] MLJU 1474; [2017] MLRAU 401), the scheme of s. 51A of the Criminal Procedure Code is aimed at facilitating a speedy trial and minimising delays brought

about when the defence seeks adjournments due to non-availability of certain documents relied on by the prosecution as part of its case. This is apparent from a reading of the Hansard when the Criminal Procedure Code (Amendment) Act 2006 [Act A1274] was tabled in the August House. In tabling the Criminal Procedure Code (Amendment) Act 2012 [Act A1423], the Honourable Deputy Minister at the Prime Minister's Department, Datuk Liew Vui Keong said:

> Tujuan seksyen 51A tersebut dimasukkan ke dalam Kanun Tatacara Jenayah telah diterangkan dengan jelas oleh Yang Berhormat Dato' Seri Mohd Radzi bin Sheikh Ahmad, Menteri di Jabatan Perdana Menteri pada masa itu, semasa membentangkan rang undang-undang berkenaan di Parlimen seperti yang berikut, "Tujuan kita buat demikian ialah untuk memendekkan perbicaraan dengan cara itu. Kedua, dengan cara itu pihak pembela tidak akan membuat permohonan kepada mahkamah untuk menangguhkan kes-kes kerana kononnya dokumen ini belum dapat diterima lagi dan dia hendakkan dokumen ini dan sketch plan dan seterusnya daripada pihak pendakwa. Dengan cara itu, kita memendekkan perbicaraan.

[25] In reading s. 51A of the Criminal Procedure Code, I am of the considered view that the statutory obligation of the prosecution for delivery of pre-trial documents could not extend to more than that as envisaged by s. 51A(1)(a) to (c) of the Criminal Procedure Code. The responsibility under s. 51A of the Criminal Procedure Code should not reside on the prosecution to provide the defence with all documents that is necessary for the defence. Insofar as pre-trial documents favourable to the defence is concerned, suffice if the prosecution has provided the defence with the type of documents specified under para. (c) of s. 51A(1) of the Criminal Procedure Code which, in the opinion of the prosecution, would be favourable to the defence in relation to the charge. Paragraph (c) of s. 51A(1) of the Criminal Procedure Code specifically provides the directory obligation (See: *PP v. Mohd Fazil Awaludin* [2009] 2 CLJ 862; [2009] 7 MLJ 741; [2009] 1 MLRH 528) of the prosecution to deliver to the accused a written statement of facts favourable to the defence of the accused but not of documents specifically in the true meaning of the word.

[26] These are pre-trial documents and on a plain reading of s. 51A of the Criminal Procedure Code, I am of the considered view that the responsibility of the prosecution to deliver them to the defence does not extend until after the commencement of trial. Section 51A(5) of the Criminal Procedure Code does not impose a similar duty on the prosecution but merely qualifies the production or delivery of documents after the trial has commenced by allowing the accused a reasonable time to examine the document and to recall or resummon and examine any witness in relation to that document. To my mind, s. 51A(5) of the Criminal Procedure Code merely encompasses documents which the prosecution intends to adduce as part of its case and

do not extend to documents which consist of statements favourable to the defence. On this premise, with respect, I am of the considered view that the contention of the learned counsel for the applicant that the prosecution is bound to furnish to the applicant the regulatory settlements pursuant to s. 51A of the Criminal Procedure Code is very much misguided and would be an attempt at stretching too much an interpretation to the otherwise clear words of the statute.

Conclusion

[27] The decision of the apex court in *Dato' Seri Anwar Ibrahim v. PP* (*supra*) is very much binding on this court and on the basis of *stare decisis*, this court must loyally follow the decision of the highest court in the hierarchical system of the Judiciary to maintain a certain degree of certitude in judicial decisions. It is also clear that the position of the common law pertaining to admission of additional evidence was considered by the Federal Court in *Dato' Seri Anwar Ibrahim*'s case.

[28] In the present application, I find that the regulatory settlement was not available to the prosecution before the commencement of the trial and as such, the prosecution could not be said to have run afoul of s. 51A of the Criminal Procedure Code. Even if the regulatory settlements were available to the prosecution before the commencement of the trial, what was expected of the prosecution was merely to furnish the accused with a written statement of the fact of that regulatory settlements and not the regulatory settlements itself. In respect of the series of eight Form 49 of ALPI, I find that the statutory forms are evidence which were already available during trial. I also find that the applicant has not discharged his burden to show that the four cumulative requirements being the threshold for admission of additional evidence having been satisfied. On the premise of the aforesaid reasons, I hereby dismiss this application.